



## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

#### **Fish and Wildlife Service**

**[BLM\_FRN\_MO4500175331]**

### **Notice of Intent to Prepare a Supplemental Environmental Impact Statement to Reconsider a Highway Right-of-Way Application and Associated Amendment of an Incidental Take Permit, Washington County, Utah**

**AGENCY:** Bureau of Land Management, Fish and Wildlife Service, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and the Endangered Species Act of 1973, as amended (ESA), the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS), as co-lead agencies, intend to prepare a Supplemental Environmental Impact Statement (SEIS) to further consider the effects of granting a right-of-way (ROW) to the Utah Department of Transportation (UDOT) for the Northern Corridor Project (a proposed highway) as well as a potential amendment to the Incidental Take Permit (ITP) issued to Washington County, Utah, under Section 10(a)(1)(B) of the ESA. This notice announces the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the SEIS. The BLM and FWS request the public submit comments concerning the scope of the analysis, potential alternatives, impacts of the proposed action and alternatives, and identification of relevant information and studies by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. To afford the BLM and FWS the opportunity to consider comments in the Draft SEIS, please ensure your comments are

received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later.

**ADDRESSES:** You may submit comments related to the highway ROW and associated amendment of an ITP by any of the following methods:

- Website: <https://eplanning.blm.gov/eplanning-ui/project/2026562/510>
- Mail: Bureau of Land Management, Attn: Northern Corridor SEIS, 345 East Riverside Drive, St. George, UT 84790

Documents pertinent to this proposal may be examined online at

<https://eplanning.blm.gov/eplanning-ui/project/2026562/570> and at the BLM St. George Field Office.

**FOR FURTHER INFORMATION CONTACT:** Dawna Ferris-Rowley, NCA

Manager, Red Cliffs and Beaver Dam Wash NCAs, telephone (435) 688-3200; address 345 East Riverside Drive, St. George, UT 84790; email

[BLM\\_UT\\_NorthernCorridor@blm.gov](mailto:BLM_UT_NorthernCorridor@blm.gov). Contact Ms. Ferris-Rowley to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Ferris-Rowley. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

The BLM and FWS are issuing this Notice of Intent pursuant to NEPA, 42 United States Code (U.S.C.) 4321 *et seq.*; the Council on Environmental Quality regulations for implementing NEPA, 43 Code of Federal Regulations (CFR) parts 1500 – 1508; and the Department of the Interior’s NEPA regulations, 43 CFR part 46.

The SEIS is being prepared to supplement the analysis contained in the 2020 Final EIS (FEIS) by BLM and FWS (the entire FEIS can be found at: <https://eplanning.blm.gov/eplanning-ui/project/1502103/570>).

On September 4, 2018, UDOT submitted an application for a ROW grant for the Northern Corridor Project north of the City of St. George, Utah, on BLM-managed and non-Federal lands within the Red Cliffs National Conservation Area (NCA) and Red Cliffs Desert Reserve. To consider the application, the BLM needed to also consider amending the St. George Field Office and Red Cliffs NCA Resource Management Plans (RMPs). The Red Cliffs NCA was established through the passage of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www), and the Red Cliffs Desert Reserve was established for the protection of the Mojave desert tortoise under the 1995 Washington County Habitat Conservation Plan. In 2015, pursuant to Section 10(a)(1)(B) of the ESA, Washington County applied to renew and amend the ITP. The restated and amended Habitat Conservation Plan associated with the ITP application described the Northern Corridor highway as a potential changed circumstance, which would be partially offset with the addition of a new sixth zone to the Red Cliffs Desert Reserve (Reserve Zone 6) as the primary conservation strategy.

In accordance with NEPA, the BLM and FWS prepared an EIS to analyze the environmental impacts associated with the proposed action and reasonable alternatives. The BLM also consulted with the FWS to meet the requirements in Section 7 of the ESA. The FWS issued a biological opinion to the BLM that determined the ROW and amendments to the RMPs were not likely to jeopardize the continued existence of the Mojave desert tortoise and that they were not likely to destroy or adversely modify designated critical habitat for the desert tortoise. The FWS issued an intra-agency biological opinion which determined that the ITP is not likely to jeopardize the continued existence of the Mojave desert tortoise, Holmgren milkvetch, Shivwits milkvetch, dwarf

bear-poppy, Siler pincushion cactus, Gierisch mallow, and Fickeisen plains cactus or result in the adverse modification of critical habitat for any of the above listed species.

On January 13, 2021, the Secretary of the Interior signed a Record of Decision that approved the Northern Corridor ROW application and approved the amendments to the RMPs. The decision approving the ROW was effective immediately. The BLM then signed and issued the ROW grant to UDOT on the same day. Also on January 13, 2021, the FWS Regional Director for Interior Regions 5 and 7 signed a Record of Decision approving the issuance of an ITP to Washington County. The FWS issued the ITP to Washington County on January 13, 2021.

On June 3, 2021, seven conservation organizations (collectively, Plaintiffs) filed an initial complaint in the United States District Court for the District of Columbia, Case No. 1:21-cv-01506. Among other claims, Plaintiffs alleged the BLM's ROW decision violated both NEPA and the National Historic Preservation Act (NHPA). The Plaintiffs stated, in part, that the FEIS did not fully address the changed circumstances of wildfire in the region and the impacts it may have on the Mojave desert tortoise, desert tortoise habitat, and the spread of invasive annual grasses. The Plaintiffs also alleged that the BLM failed to comply with the consultation requirements under Section 106 of the NHPA. On July 27, 2021, Plaintiffs amended their complaint to include the FWS and additional claims related to NEPA and the ESA.

As part of the ongoing litigation, the United States moved for the remand and partial vacatur of BLM's and FWS's 2021 decisions. In the motion, the United States acknowledged that the BLM did not comply with the NHPA as well as the BLM's and FWS's substantial and legitimate concerns that the FEIS may lack sufficient analysis of certain resource effects (see **Summary of Expected Impacts**). In addition to that pending motion, the United States and Plaintiffs have also reached a settlement agreement.

## **Purpose and Need for the Proposed Action**

In 2018, UDOT applied for a ROW to construct a multi-lane, divided highway on BLM-administered lands within the Red Cliffs NCA and the overlapping Red Cliffs Desert Reserve. In January 2021, after completing the FEIS, the Secretary of the Interior approved the ROW application, and the BLM issued a FLPMA Title V ROW grant to UDOT. Per the motion and by the terms of the settlement agreement, the BLM's purpose and need for this action is to reconsider the 2018 ROW application to determine whether the BLM will approve, approve with modifications, or deny the application. The FWS's purpose and need for action is to consider an amendment of Washington County's ITP consistent with the BLM's reconsideration of UDOT's ROW application.

## **Preliminary Proposed Action and Alternatives**

At this time, the BLM anticipates the range of alternatives analyzed in detail in the SEIS will be substantially similar to those analyzed in the FEIS completed in 2020 for the ROW alignments. The FWS anticipates the ITP-related alternatives will range between amending the ITP or not amending the ITP corresponding with the BLM's range of alternatives. The SEIS will not reconsider any amendments to the BLM's RMPs. The BLM and FWS welcome comments on all preliminary alternatives as well as suggestions for additional alternatives.

## **Summary of Expected Impacts**

The impacts disclosed in the SEIS are expected to substantially align with the impacts that were analyzed in the 2020 FEIS with additional analysis of potential impacts, including further analysis of the effects of the construction and use of the Northern Corridor Project in the context of the following: (1) the trend in the increasing frequency and extent of wildfires in the Mojave Desert; (2) the rise of non-native/exotic and invasive vegetation in post-burn areas; and (3) the impacts increased fire and new non-native/exotic and invasive vegetation have on desert tortoise. The BLM is concerned that

supplemental analysis may be needed to better inform its review of the potential impacts of UDOT's ROW application in light of impacts from wildfires to the desert tortoise and its habitat. The BLM also intends to complete the consultation requirements under the NHPA before issuing a new ROW decision.

### **Anticipated Permits and Authorizations**

The BLM will reconsider UDOT's 2018 ROW application and decide whether to approve, approve with modifications, or deny UDOT's ROW application. The FWS will determine whether to amend Washington County's ITP for the Mojave desert tortoise.

### **Schedule for the Decision-Making Process**

The BLM and FWS will provide additional opportunities for public participation consistent with the NEPA process, including a 45-day comment period on the Draft SEIS. The Draft SEIS is anticipated to be available for public review in spring 2024, and the Final SEIS is anticipated to be released in September 2024 with Records of Decision in November 2024.

### **Public Scoping Process**

This Notice of Intent initiates the scoping period. The BLM and FWS will be holding one in-person public scoping meeting in St. George, Utah. The specific date and location of the scoping meeting will be announced in advance through local media, the ePlanning project page (see **ADDRESSES**), and the BLM website (see **ADDRESSES**).

### **Lead and Cooperating Agencies**

Lead agencies are the BLM and the FWS. Based on who participated in the FEIS, cooperating agencies are likely to include the State of Utah—Public Lands Policy Coordinating Office, Washington City, Dixie Metropolitan Planning Organization, the City of St. George, the City of Ivins, Santa Clara City, and the City of Hurricane.

### **Responsible Officials**

The responsible official for the BLM is the BLM Utah State Director. The scope of the State Director's decision is limited to the ROW. If the decision authorizes issuance of a new ROW grant, the St. George Field Manager will be the responsible official to issue the grant. The responsible official for the FWS is the Deputy Regional Director for the Mountain-Prairie Region. The scope of the Deputy Regional Director's decision is limited to the ITP for the Mojave desert tortoise.

### **Nature of Decision To Be Made**

The Responsible Officials will determine whether to approve, approve with modifications, or deny the 2018 ROW application for the construction of a highway (BLM) and what amendments, if any, are needed to the ITP (FWS).

### **Additional Information**

The BLM and FWS will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed action or alternatives.

Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale.

The BLM and FWS will utilize and coordinate the NEPA process to help support compliance with applicable procedural requirements under the ESA (16 U.S.C. 1536).

BLM will also use the NEPA process to comply with Section 106 of the NHPA (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including the public involvement requirements of Section 106. Information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources. The BLM will also consult on cultural resources and create a Memorandum of Agreement with consulting parties.

The BLM and FWS will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual Section 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Federal, State, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed action the BLM and the FWS are evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM and FWS to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can include in your comment a request to withhold your personal identifying information from public review, the agencies cannot guarantee that they will be able to do so.

(Authority: 40 CFR 1501.9)

**Gregory Sheehan,**

*State Director.*

**Anna Munoz,**

*Deputy Regional Director.*